



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Independent Business Services Inc.--
Request for Reconsideration

File: B-235569.4

Date: February 23, 1990

George Quigley Vaile, Esq., and Charles E. Jordan, for the protester.
Colonel Herman A. Peguese, Department of the Air Force, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly canceled solicitation where no offerors proposed compliant products and the agency determined that the specifications exceeded agency's needs and were overly restrictive, and that resoliciting the requirement under less restrictive specifications will increase competition and assure full and open competition.

DECISION

Independent Business Services Inc. (IBS) requests reconsideration of our decision in Independent Business Servs., Inc., B-235569.3, Nov. 2, 1989, 69 Comp. Gen. _____, 89-2 CPD ¶ 413, in which we denied IBS' protest of the cancellation of request for proposals (RFP) No. F33600-88-R-0177, issued by the Department of the Air Force for an indefinite quantity contract for high- and low-speed laser printers and associated software, training and maintenance over a 3-year period.

We deny the request for reconsideration.

The Air Force canceled the solicitation because it determined that: (1) none of the printers offered met the size requirements specified in the solicitation; and (2) the dimensions specified did not represent the true requirements of the agency. In our initial decision, we did not address the second reason for cancellation because we found that the fact that none of the proposed printers complied with the specifications adequately justified the cancellation. The solicitation limited the maximum width of the low-speed

047882/140749

printers to 33 inches. The technical evaluators eventually determined that all of the proposed printers exceeded this size limitation. The evaluators specifically found that IBS' printer was at least 33.8 inches wide based on the descriptive literature and proposal submitted by IBS. In its initial protest, IBS disputed that its printer exceeded the maximum size requirements, and argued that the agency incorrectly calculated the size of the paper tray when in an extended position rather than the shorter size of the tray when folded. Since the solicitation specifically required a straight paper path, we agreed that the agency's calculation was correct. IBS also argued that the agency should have known of the built-in "flexible nature" of the printer it offered, which permitted setting up the paper tray in a manner which achieved a compliant overall printer of less than 33 inches. However, the record indicated that this "modification" was offered only after IBS was notified by the agency that all of the printers offered were too large, and after best and final offers (BAFOs) were submitted. Accordingly, we denied its protest on the grounds that none of the printers complied with the specifications and that an offeror has no legal right to insist that an agency reopen discussions after BAFOs are submitted to prove that its offer complies with solicitation requirements.

In its request for reconsideration, IBS reasserts its allegation that its printer is within the allowable size limit, and argues that the agency should have considered that "standard hardware" available from the manufacturer would have made its printer compliant. IBS also alleges that it informed the agency of this "standard hardware" prior to the submission of BAFOs. The record reveals, however, that although IBS stated in a letter that its machine possessed certain options which made it compliant, it offered no details, nor any evidence for the agency to review. Accordingly, IBS has not shown that our initial conclusion, that post-BAFO discussions would have been required for IBS to establish compliance, was erroneous.

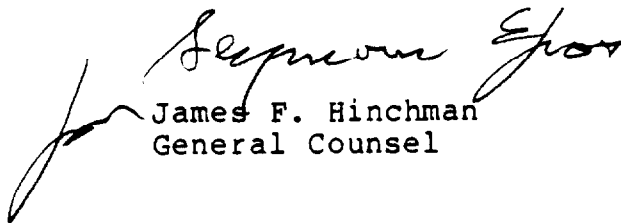
IBS also argues that although the specifications were "very restrictive and anticompetitive" the agency should not be permitted to cancel and resolicit because, due to the passage of time, other, more advanced laser printers are now available and IBS' printer is no longer competitive.

Federal Acquisition Regulation § 15.608(b)(4) provides that a procuring agency may reject all proposals (even if technically acceptable) received in response to a solicitation if cancellation is clearly in the government's interest. In a negotiated procurement such as this, the contracting officer has broad discretion in deciding whether

to cancel a solicitation after the receipt of proposals, and need only have a reasonable basis to do so. Lucas Place, Ltd., B-235423, Aug. 30, 1989, 89-2 CPD ¶ 193. We have specifically held that a reasonable basis to cancel exists when a new solicitation presents the potential for increased competition. Id. Moreover, the fact that the agency did not cite the possibility of obtaining enhanced competition as the original basis for cancellation is of no effect. Information relating to whether there is sufficient reason to cancel a solicitation after proposals have been opened can be considered no matter when it surfaces, even where the reasons justifying the cancellation were only first raised by the procuring agency in response to a protest to our Office. Crow-Gottesmen-Hill #8--Reconsideration, B-227809.2, Nov. 10, 1987, 87-2 CPD ¶ 471.

Here, the agency determined that the RFPs 33 inches width limitation exceeded its needs, that a 40-inch limitation would satisfy its needs, and that this change would permit all seven offerors to provide compliant printers, and open the competition to other commercially available printers as well. Accordingly, the agency reasonably determined to cancel the RFP since, after reevaluating its needs, it found that they could be satisfied by less restrictive specifications, which would increase competition.

The request for reconsideration is denied.


James F. Hinchman
General Counsel